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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/438,872	11/12/1999	KENT C. COCHRUM	44041.010400	9965

7590

02/05/2003

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EXAMINER

MARX, IRENE

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 02/05/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/438,872

Applicant(s)

Cochrum et al.

Examiner

Irene Marx

Art Unit

1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 23, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 9, 11-13, and 29-36 is/are pending in the application.
- 4a) Of the above, claim(s) 29-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 9, and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

The amendment filed 12/23/02 is acknowledged. Claims 1, 3, 9, and 11-13 are being considered on the merits. Claims 14-24, 26, 28 and 37, 40-42 and 45-63 are cancelled. Non-elected claims 29-36 are withdrawn from consideration.

Claim Rejections - 35 USC § 102

Claims 1, 3, 9, 12 and 13 remain rejected under 35 U.S.C. 102(b) as being clearly anticipated by G.B. 1454055 [N].

G.B. 1454055 discloses a wound dressing comprising dextran-epichlorohydrin polymer particles or beads and a matrix which may be paper, cotton fabric, inert plastics, etc. (page 6). Disinfectants may be added to the carrier (page 6, l. 36). Sterilization may be by gamma irradiation (p. 6, l. 130).

With respect to the added limitation regarding the property of the cross-linked dextran of triggering release of "clotting factors and other ancillary substances", this function is an inherent property of cross-linked dextrans.

Claim Rejections - 35 USC § 103

Claim 11 remains rejected under 35 U.S.C. 103(a) as being unpatentable over G.B. 1454055 [N] as applied to claims 1, 3, 9, 12 and 13 above, and further in view of Larson [R] or Eloy *et al.* [S] and Wang (US 5196190 [B]) for the reasons as stated in the last Office action and the further reasons below..

The claim is directed to a dry, stable, sterile wound dressing comprising a matrix containing a hemostatic polymer such as cross-linked dextran and collagen or thrombin or fibrinogen.

Response to Arguments

Applicant's arguments have been fully considered but they are not deemed to be persuasive.

Applicant argues that the preferred embodiment of the patent is dextran G-25 and the preferred embodiment of the instant application is G-150 (Response, page 4 et seq.). However, the issue for anticipation is not whether the preferred embodiments are the same, but rather whether an embodiment in the reference reads on and anticipates the claimed invention.

Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi, 440 F.2d 442, 169 USPQ423 (CCPA 1971). "A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." In re Gurley, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994)(The invention was directed to an epoxy impregnated fiber-reinforced printed circuit material. The applied prior art reference taught a printed circuit material similar to that of the claims but impregnated with polyester-imide resin instead of epoxy. The reference, however, disclosed that epoxy was known for this use, but that epoxy impregnated circuit boards have "relatively acceptable dimensional stability" and "some degree of flexibility," but are inferior to circuit boards impregnated with polyester-imide resins. The court upheld the rejection concluding that applicant's argument that the reference teaches away from using epoxy was insufficient to overcome the rejection since "Gurley asserted no discovery beyond what was known in the art." 27 F.3d at 554, 31 USPQ2d at 1132.).

It is also noted that it is the claimed composition and not the examples in the specification or the intended use of the composition that are the basis of examination with respect to the prior art. It is well settled that an unobvious use of a known composition does not confer patentability on the composition. "The discovery of a new property or use of a previously known composition, even when that property and use are unobvious from the prior art, can not impart patentability to claims to the known composition." "It is beyond argument that no utility need be disclosed for a reference to be anticipatory of a claim to an old compound. The compound appellants are attempting to patent is not new - the use they discovered is, and they received a method patent for that." In re Schoenwald 22USPQ2d:1673; In re Spada 15 USPQ2d:1658.

In the instant case, the '055 patent provides for at least one embodiment wherein the hydrophilic polymer is chosen such that its pores will exclude "high molecular weight degradation products of the fibrinogen, for example such as those degradation products having a molecular weight of between about 270,000 and 165,000." (See, e.g., page 2, lines 3-9). This molecular weight falls within the range now claimed. It is also noted that the patent specifically

notes the desirability of including the "so-called thrombocyte factors which influence the first phase of the blood coagulation process" in the disclosure (See, e.g., page 1, col. 2, line 91).

Applicant's arguments regarding the enablement aspect of the reference are not clearly relevant to the invention claimed. There is, in fact, an embodiment in the reference having the required structure. Applicant appears to be arguing the use of the composition to stop bleeding in this regard. However, the claims are directed to a composition and not to a method of using the composition to stop bleeding. Thus, enablement arguments regarding the make and use aspect may be pertinent to a method of using the composition, but are not pertinent to a composition as herein, i.e., a dry, storage stable sterile dressing comprising a matrix comprising beads of cross-linked dextran having a molecular weight exclusion limit of 100,000 to 650,000. Furthermore, it is the examiner's position that the reference teaches this composition. The functional limitations are inherent in the composition.


Therefore the rejections are deemed proper and are adhered to.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is before final (703) 872-9306 and after final, (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.


Irene Marx
Primary Examiner
Art Unit 1651